

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

FILED - CLERK  
U.S. DISTRICT COURT  
2005 OCT 28 PM 2:39  
IX EASTERN-BEAUMONT  
BY *Dele McMillan*

SUSAN SIMMONS AND  
JOHN SIMMONS,  
Plaintiffs

VS.

WAL-MART STORES, INC.,  
Defendant

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CIVIL ACTION NO. 1:05CV0723

Judge Crone

**PLAINTIFFS' ORIGINAL COMPLAINT AND JURY DEMAND**

COMES NOW, SUSAN SIMMONS and JOHN SIMMONS, Plaintiffs, complaining of and against WAL-MART STORES, INC., hereinafter referred to as Defendant, and files this their Original Complaint and for cause of action would respectfully show unto the Court and jury the following:

**JURISDICTION AND VENUE**

1. Venue is proper in the Eastern District of Texas under 28 U.S.C. §1391(a) and (c) because a substantial part of the events or omissions giving rise to the claim occurred in Liberty County, Texas, and Defendant is subject to personal jurisdiction in the Eastern District of Texas and deemed to reside in this district for venue purposes.

2. The jurisdiction of this Court attaches under the provisions of 28 U.S.C. §1332, in that the amount in controversy exceeds, exclusive of interest and costs, the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000) and the parties are all residents of different states in that Plaintiffs are citizens of Texas and Defendant WAL-MART STORES, INC., is a citizen of a state other than Texas because it is incorporated in a foreign state and has its principal place of business in a state other than Texas. Defendant

is amenable to service of process by this Court.

### **PARTIES**

3. Plaintiff are citizens of the State of Texas and residents of Dayton, Liberty County, Texas, in the Beaumont Division of the Eastern District of Texas.

4. Defendant WAL-MART STORES, INC., is foreign corporation organized and existing under the laws of the state of Delaware. At all relevant times, Defendant was in the business of retail sales, operating mass merchandising stores for the sale for profit of a wide variety of consumer merchandise to the public, including Plaintiffs. One of Defendant's retail stores is Wal-Mart Store No. 1186 located at 2801 N. Main, Liberty, Liberty County, Texas, where the incident giving rise to this lawsuit occurred. Said Defendant may be served with process by serving its registered agent for service, C T Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

### **FACTUAL BACKGROUND AND CAUSES OF ACTION**

5. On or about August 13, 2004, Plaintiff SUSAN SIMMONS went to Defendant's Wal-Mart Store No. 1186 at 2801 N. Main, Liberty, Texas, to purchase various items. Consequently, at all material times herein, Plaintiff was a business invitee of Defendant, WAL-MART STORES, INC., to whom the Defendant owed a duty to use ordinary care, including the duty to protect and safeguard Plaintiff from dangerous conditions on the premises or to warn of their existence.

6. While upon the Defendant's premises, Plaintiff SUSAN SIMMONS suffered serious and permanent bodily injuries as a direct and proximate result of the negligence of Defendant, its agents, servants and employees, when she slipped in a puddle of water

which was on the floor and fell to the floor, striking her left knee and shattering her knee cap.

### **DAMAGES**

7. As a result of the negligence of the Defendant, Plaintiff SUSAN SIMMONS sustained severe personal injuries which in all probability will be permanent. Plaintiff has suffered physical pain and mental anguish in the past and in all probability will have such physical pain and mental anguish in the future. She incurred medical expenses in connection with necessary medical treatment for injuries arising out of the incident made the basis of this cause of action, with such expenses being reasonable in amount at the time and place they were rendered. Further, in all probability, she will incur medical expenses in the future for reasonable and necessary care and treatment of her injuries.

In addition, Plaintiff has suffered from physical impairment in the past, and will, in reasonable probability, continue to suffer such impairment for the rest of her life. Plaintiff has also suffered a loss of wages and loss of earning capacity in the past, which, in all probability, will continue on a permanent basis in the future. Plaintiff has also suffered permanent scarring and disfigurement as a result of the surgical procedures required to treat her injuries.

8. Plaintiff JOHN SIMMONS has also sustained damages as a result of his wife's severe injuries and permanent disability, including a loss of her household services and loss of consortium, in the past and in the future.

9. As a result of the foregoing, Plaintiffs claim damages in such amounts as the evidence may show proper at the time of trial, in excess of the minimum jurisdictional limits of this Court.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited to appear and answer herein and that upon final hearing, they have judgment of and against Defendant for their actual damages, prejudgment and postjudgment interest, at the maximum legal rate, costs of court, and for such other and further relief, special and general, at law and in equity, to which they may show that they are justly entitled to receive.

Respectfully submitted,

BUSH LEWIS, P.L.L.C.

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